IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: December 22, 2006

Sucha Singh Vs. State of Punjab

CORAM: Hon'ble Mr. Justice Virender Singh

Present: Mr. K.S. Dadwal, Advocate, for the appellant.
Mr. M.S. Sidhu, Sr. DAG, Punjab.

Virender Singh, J.

Appellant Sucha Singh stands convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') by learned Additional Sessions Judge, Ludhiana, vide impugned judgment dated 19.4.1997 for allegedly keeping in his conscious possession 5 Kgs of opium. He has been sentenced to undergo R.I. for ten years and to pay a fine of Rs.1.00 lac, in default thereof to further undergo R.I. for one year. Aggrieved by the same, he has preferred the instant appeal.

The case of the prosecution in brief is that on 7.11.1993 when ASI Darshan Ram (PW1) along with other police officials was present at liquor vend in Transport Nagar, Ludhiana in connection with checking, a tempo bearing registration No.PUK-3041 was seen

coming from the side of Sherpur road. It was got stopped and all the persons sitting in that tempo were checked. The appellant was seen carrying one bag in his right hand. The aforesaid ASI Darshan Ram suspected the appellant carrying some narcotic item in it and as such asked him if he wanted his search to be conducted before a Gazetted Officer or a Magistrate. The appellant vide statement Ex.PA reposed confidence in him. The aforesaid statement was attested by the police officials. Thereafter, the bag was searched by ASI Darshan Ram which lead to the recovery of 5 Kgs of opium wrapped in a glazed paper. Two samples of 50 grams each were taken out from that opium and the remaining was put in a tin. The samples and the tin were sealed by ASI Darshan Ram with his own seal bearing inscription 'DR' and taken into possession through recovery memo Ex.PB which was attested by the police officials present him. Ruqa Ex.PC was sent to the concerned Police Station on the basis of which formal FIR Ex.PC/1 was recorded. Special report was also sent to the higher authorities. Rough site plan Ex.PD of the place of recovery was prepared. The appellant was apprised of the grounds of his arrest and thereafter he was formally arrested. On reaching the Police Station, ASI Darshan Ram produced the accused and the case property before SHO Naginder Singh Rana (PW6) who verified all the facts and put his own seal on the case property bearing impression 'NSR' and deposited the case property with MHC Gian Singh (PW2). The case property and the appellant were produced

before the Magistrate on the following day. One sample was sent to the Chemical Examiner and after the receipt of the report Ex.PH, the investigation was completed and the appellant was challaned in this case. He was charged under section 18 of the Act by the trial Court.

In order to substantiate the charge, the prosecution has examined ASI Darshan Ram (PW1), the Investigating Officer of this case. The investigation conducted by him has been discussed in the preceding paras, MHC Gian Singh (PW2) was produced to prove the link evidence, Head Constable Beant Singh (PW3), a witness to the recovery who has supported the entire case of prosecution, ASI Charanjit Singh (PW4) who on receipt of the ruqa recorded the formal FIR, Constable Jagdev Singh (PW5) who also tendered his affidavit Ex.PF to complete the chain of link evidence, S.I. Naginder Singh SHO (PW6) who had deposed with regard to the compliance of Section 55 of the Act, Shri S.S. Gupta, the then Chief Judicial Magistrate, Ludhiana (PW7) before whom the appellant and the case property was produced on 8.11.1993. He found all the seals intact and thereafter initialed the tin and the samples. According to his evidence, after passing formal order Ex.PG, the samples and the main bulk of the contraband was handed over to Darshan Ram ASI. This witness had proved the application Ex.PG/1 moved by the concerned police official. Report of the Chemical Examiner Ex.PH was also tendered by the prosecution into evidence.

The plea taken by the appellant as emerges from his

statement under Section 313 Cr.P.C. is of false implication asserting that he was taken from his house by S.I. Inder Singh on 5.11.1993 and was inquired about one Gurcharan Singh, resident of Vishal Nagar, Ludhiana who was already in the custody of the police. He in fact did not know anything about Gurcharan Singh and altercation had taken place with Narinder Singh SHO, on this who falsely implicated him in the present case. However, in defence the appellant has not produced any witness.

After appreciating the entire case of the prosecution, the learned trial Court has convicted and sentenced the appellant as indicated above.

I have heard Mr. K.S. Dadwal, learned counsel for the appellant and Mr. M.S. Sidhu, Sr. DAG Punjab. With their assistance I have gone through the entire record minutely.

The first limb of arguments advanced by Mr. Dadwal is that there is a violation of Section 42 of the Act as the secret information received was not reduced into writing and sent to the senior police official and this lacuna alone is enough to discard the case of the prosecution in its totality. Developing his arguments on this aspect, learned counsel submits that it has come in the cross-examination of Darshan Ram ASI that DSP Nachhattar Singh had the secret information on that day and he received the secret information from DSP at 7.15 A.M. The vehicle was apprehended during noon hours as the time of completion of the ruqa is 2.05 P.M. All these

facts indicate that the police had received secret information about six hours prior to the stopping of the truck at a particular place and still the same was not reduced into writing as required under Section 42 of the Act for sending it to the senior officials and has made mandatory by latest pronouncements. According to the learned counsel, the violation of Section 42 of the Act is writ large in the case in hand and the appellant deserves acquittal on this vital infirmity.

The argument advanced by Mr. Dadwal deserves to be rejected in the light of a latest judgment of Hon'ble Supreme Court rendered in **Babubhai Odhavji Patel etc. Vs. State of Gujarat, JT 2005 (9) Supreme Court 410** wherein it has been held that compliance of Section 42 is not attracted where there was no previous information about the transporting of the contraband.

What I can make out from the cross-examination of Darshan Ram ASI is that there was a general secret information received by DSP and the direction was to hold a Naka and check all the vehicles passing through that particular side. Mr. Dadwal has read out only that portion of the cross-examination which comes to the rescue of the appellant. I feel the necessity of reproducing the exact cross-examination of the Investigating Officer on this aspect which is as under:-

> "The Circle Officer had secret information on that day. His name is Nachhattar Singh DSP. I came to know about the receipt of the secret information by the DSP at

> 7.15 A.M. I was called in the meeting alongwith other police officials. 7-8 persons, all the incharge of the police post which falls in the jurisdiction of P.S. Div. No.6, were called by the DSP. I was not told anything by the DSP. Only Dalip Kumar SI was directed to hold a naka at Transport Nagar. I was not given any writing by the DSP or by SI Dalip Kumar, directing me to put a naka in the Transport Nagar. I received a wire-less message regarding the meeting in the Police Station again said I was present in the Police Station, where the meeting was held regarding this secret information. The meeting was held for half an hour or one hour. I cannot tell the number of the vehicle in which I was patrolling the area on that day. We reached at the place of nakabandi at about 7.45 A.M. The four-wheeler was stopped by SI Dalip Kumar at about 12 noon on that day. During this four hours many people were checked by S.I. Dalip Kumar and by me. But, I have not entered the names of the owners of the vehicles which were checked by me on that very day. I am not in the knowledge that whether I have asked the public person to join me in the police party during these four hours."

From the aforesaid statement of the Investigating Officer it is evident on record that there was no secret information with regard to vehicle No.PUK-3041 in particular, carrying the contraband. Therefore, for all intents and purposes, it can not be said to be a case of previous information. Rather incidently the vehicvle was stopped in which the appellant was travelling. In this eventuality, compliance of Section 42 of the Act is not attracted as

held in **Babubhai Odhavji Patel's case (supra)**. I, therefore, repel the argument advanced by Mr. Dadwal on this aspect.

Mr. Dadwal then submits that the statement of the appellant was not recorded separately regarding his desire to be searched before the Gazetted Officer or the Magistrate and, therefore, his conviction is not sustainable in the eye of the law. He submits that even otherwise partial offer was given to the appellant and the search conducted by ASI Darshan Ram is against the provisions of Section 50 of the Act. In other words, Mr. Dadwal wants to take shelter of the provisions of Section 50 of the Act.

I do not agree with the aforesaid submissions advanced by Mr. Dadwal as in the present set of circumstances, Section 50 of the Act is not at all attracted. The appellant, according to the prosecution case, was carrying a bag in his right hand and, therefore, it cannot be said to be a search of the person in the light of latest Supreme Court judgment rendered in **State of Humachal Pradesh Vs. Pawan Kumar, 2005 (2) All India Criminal Law Reporter 653**.

Mr. Dadwal lastly contends that the link evidence is missing in this case inasmuch as the possibility of the tampering with the case property cannot be ruled out. He submits that the sample was drawn on 7.11.1993 whereas the same was handed over to Constable Joginder Singh on 27.12.1993 for depositing the same with

the Chemical Examiner. The delay of one month and 20 days in despatching the sample is fatal to the prosecution. The evidence led during trial on this aspect is also not convincing and, therefore, the only possible inference which can be drawn against the prosecution is that chances of tampering with the case property during this long period, cannot be ruled out. In support of his contention, Mr. Dadwal has relied upon a latest Judgment of this Court rendered in **Hukam Singh Vs. State of Haryana 2006 (2) R.C.R. (Criminal) 880**.

I am not impressed even with this limb of arguments advanced by Mr. Dadwal. No doubt, the delay in sending the sample is to be taken seriously against the prosecution, but in the case in hand, the said delay, in my view, would not be fatal. It has come in the statement of Shri S.S. Gupta, the then Chief Judicial Magistrate, Ludhiana (PW7) that on 8.11.1997 ASI Darshan Ram had produced before him the appellant and the entire case property i.e. tin along with the samples with the seal 'DR' and 'NSR'. He further stated that he had noticed all the seals at that time and had initialed the tin and the sample which were returned to Darshan Ram ASI on the same day. For my satisfaction, I have once again perused the application Ex.PG moved by the concerned police official and the order passed by the learned Magistrate which runs as under:-

> "Present: A.P.P. For the State with ASI Darshan Ram
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> The tin purportedly containing 4 Kg 900 gm. Opium alongwith two samples tins duly sealed with the

> seal bearing impression "DR" and "NSR" have been produced before me. The seals are intact. The outer wrappers of the samples and the tin have been initialed by me. Case property and the samples have been returned to ASI Darshan Ram for keeping the same in safe custody.
>
> Sd/- CJM, 8.11.93"

Had the case property not been produced before the Ilaqa Magistrate on the next day of the alleged recovery i.e. 8.11.1993 for the purposes of cross-checking as was done in this case, I would have certainly taken a serious note of the aforesaid delay in sending the sample to F.S.L. and other certain irregularities with regard to the non-preparation of the FSL Form at the spot. In my view, all these safeguards are provided to make the investigation flawless so that possibility of tampering with the case property at any stage including the stage of sending the samples to the Chemical Examiner is ruled out. In the case in hand, production of the case property before the Ilaqa Magistrate for verification and obtaining his initials, takes the investigation out of the arena of suspicion. Therefore, an attempt made by Mr. Dadwal in order to demolish the case of the prosecution on this count fails.

No other point has been urged before me by Mr. Dadwal.

As a sequel to the aforesaid discussion, the net result now surfaces is that the prosecution has been able to prove beyond any shadow of reasonable doubt, the conscious possession of the

contraband (5 Kgs of opium) qua the appellant. His conviction and sentence as recorded by the learned trial Court, therefore, deserves to be upheld. Ordered accordingly.

The instant appeal is accordingly dismissed.

(Virender Singh)
Judge

December 22, 2006
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